Supreme Court, U.S.
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NO. 95-1352

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

GARY EDWARDS and TANA WOOD,
Petitioners,

vs.

JERRY B. BALISOK,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED FEB. 20, 1996
CERTIORARI GRANTED APRIL 29, 1996

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LIST OF RELEVANT DOCKET ENTRIES

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NINTH CIRCUIT ENTRIES:

Memorandum, filed November 22, 1995

[Filed]
[April 19, 1994]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

NO. CS-93-416-JLQ

FINAL WITNESS LIST

JERRY B. BALISOK,

PLAINTIFF,

v.

GARY EDWARDS AND TANA WOOD,

DEFENDANTS.

Pursuant to the Court's Scheduling Order of April 9, 1994, Jerry B. Balisok, Plaintiff in the above entitled matter, hereby submits his Fianl Witness List.

FINAL WITNESS LIST

1. Ms. Lorraine Lee, Attorney
Washington Appellate Defender Association
500 Union St. suite 500
Seattle, Wa 98104

Ms. Lee will testify that she was Plaintiff's appellate attorney, that Plaintiff's conviction was overturned by the Washington Court of Appeals, Division I, on December 31, 1992; no new order was issued by a Washington court reinstating Plaintiff's conviction until January, 1994; and that Plaintiff was a pretrial detainee from December 31, 1992 until January, 1994.

2. Gary Edwards
PO Box 520
Walla Walla, Wa 99362

Defendant Edwards will testify that he refused to take proper witness statements; failed to specify which documents he relied upon to find Plaintiff guilty of four major infractions; concealed inmate John Stein's witness statement from Plaintiff; that he withheld exculpatory evidence that I&I had discovered that Plaintiff's accuser, inmate John Adams DOC #287645, was lying about Plaintiff's alleged involvement in any misconduct and that I&I had confronted Adams with this exculpatory evidence even before Plaintiff was sent to IMU.

3. Tana wood
PO Box 520
Walla Walla, WA 99362

Defendant Wood will testify that she refused to overturn Plaintiff's infractions and restore his goodtime and earned time credits after Plaintiff pointed out to her in a letter that inmate John Stein's witness statement was in Plaintiff's central file and that it had been withheld by defendant Edwards at Plaintiff s disciplinary hearing.

4. Donald Hemphill, Inmate
Washington State Penitentiary
PO Box 520
Walla Walla, WA 99362

Mr. Hemphill will testify that he has personal knowledge that the Washington State penitenti ry administration had knowledge prior to Plaintiff being sent to IMU or being found guilty of four major infractions that inmate John Adams was lying about Plaintiff's misconduct or being involved in any way w th the four major infractions.

5. Mrs. Ruth Greenway, Instructor
Walla Walla Community College-North Campus
Washington State enitentiary
PO Box 520
Walla Walla, Wa 99362

Mrs. Greenway will testify that Plaintiff told her that her teacher's aide might have given inmate John Adams the answers to a math exam. and plaintiff did not tell her that her teacher's aide did give the answers to Adams.

6. JOHN STEIN - 955827
Clallam Bay Correction Center
Rt. 63, Box 5000
Clallam Bay, Wa 98326-9775

Mr. Stein will testify that he has personal knowledge that the Washington State Penitentiary administration had knowledge that inmate John Adams had fabricated his accusations against Plaintiff before Plaintiff was found guilty of four major infractions.

7. John Adams - 287645
McNeil Isla d Correction Center
PO Box 900, MS WT-01
Steilacoom, Wa 98388-0900

Mr. Adams will testify that he was told by Washington State Penitentiary personnel that they knew that he had falsely accused Plaintiff of wrongdoing in connection with Plaintiff's four major infractions before Plaintiff went to IMU or was found guilty of the infractions at his disciplinary hearing.

8. Ken Jurgenson
PO Box 520
Walla Walla, Wa 99362

Mr. Jurgenson will testify that Plaintiff told him that Plaintiff was a pretrial detainee before Plaintiff was sent to IMU and before Plaintiff was infracted and found guilty of four major infractions.

9. Charles Harris - 914954
Washington State Penitentiary
PO Box 520
Walla Walla, Wa 99362

Mr. Harris will testify that John Adams sat with him and Plaintiff and inmate Sherman Pulley. That he was never asked about this by WSP staff.

10. Sherman Pulley, Inmate
Washington State Penitentiary
PO Box 520
Walla Walla, Wa 99362

Mr. Pulley will testify to the same as Mr. Harris.

11. John Massaro
PO Box 520
Walla Walla, Wa 99362

Mr. Massaro will testify that Plaintiff submitted an appeal to his infractions, that the appeal was returned to Plaintiff because it was too long, that his records show that Plaintiff did not submit a revised version. of his appeal.

12. Sue Schuler
PO Box 520
Walla Walla, Wa 99362

Ms. Schuler will testify that she is the records keeper and that she does maintain Plaintiff's Central File at Washington State Penitentiary, that contained within Plaintiff's Central File is the appeal that Plaintiff resubmitted with the notes that Plaintiff submitted with his resubmitted appeal, Mr. Pulley's witness statement, Mr. Stein's witness statement, Ken Jurgenson's memorandum marked "NOT FOR DISCLOSURE," and all the different documents used as evidence against Plaintiff in his disciplinary hearing of September 2, 1993.

13. Donald Holevinski
PO Box 520
Walla Walla, Wa 99362

Mr. Holevinski will testify that he told Plaintiff during an interview in 1994 that in Plaintiff's disciplinary hearing a mistake had been made in finding Plaintiff

guilty. Plaintiff will seek to have Mr. Holevinski clarify this statement and implicate the defendants or persons unknown that have conspired to violate Plaintiff's civil rights.

14. All rebuttal, defense, and defense rebuttal witnesses.

RESPECTFULLY SUBMITTED this 17th day of April, 1994.

/s/ Jerry B. Balisok
JERRY B. BALISOK
PLAINTIFF PRO SE

15. Sgt. Hartford
PO Box 520
Walla Walla, Wa 99362

Sgt. Hartford will testify that Intelligence and Investigation had uncovered evidence that John Adams falsely implicated Plaintiff for the sole purpose of being transferred to McNeil Island Correction Center.

16. C/O Scott Skramstead; PO Box 520, Walla Walla, WA 99362

Mr. Skramstead will testify the same as Sgt. Hartford

17. Stephen Sinclair
PO Box 520
Walla Walla, Wa 99362

Mr. Sinclair will testify the same as Sgt. Hartford.

[FILED]
[November 22, 1995]

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Nos. 95-35307
95-35310

D.C. No. CV-93-00416-JLQ

MEMORANDUM*

JERRY B. BALISOK,
Plaintiff-Appellant,
Cross-Appellee,

v.

GARY P. EDWARDS; TANA WOOD,
Defendants-Appellees-
Cross-Appellants,

Appeal from the United States District Court
for the Eastern District of Washington
Justin L. Quackenbush, District Judge, Presiding

Submitted November 20, 1995**

Filed November 22, 1995

Before: PREGERSON, NORRIS and REINHARDT, Circuit Judges.

Washington state prisoner Jerry B. Balisok appeals and Washington state prison officials Gary Edwards and Tana Wood cross-appeal the district court's order staying Balisok's 42 U.S.C. § 1983 action. We reverse and remand.

These appeals are governed by our recent decision in Gotcher v. Wood, No. 94-35484, slip op. 12881 (9th Cir. Oct. 4, 1995), in which we held that an inmate's challenge to the procedure by which he was denied good-time credits did not call into question the lawfulness of his continuing confinement and was not barred by Heck v. Humphrey, 114 S. Ct. 2364 (1994). Because Balisok's due process challenges to prison disciplinary procedures were not barred by Heck, see Gotcher, slip op. at 12885-86, we reverse the district court's order staying Balisok's section 1983 action and remand for further proceedings.

REVERSED AND REMANDED.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.2